

1990

The State of Utah v. Rick Markham : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,	:	
Plaintiff/Respondent,	:	
v.	:	
RICK MARKHAM,	:	Case No. 900040-CA
Defendant/Appellant.	:	Priority No. 2

BRIEF OF THE APPELLANT

Appeal from a conviction and judgment for Possession of Alcohol By a Minor, a Class B misdemeanor, in violation of Utah Code Ann. § 32A-12-13 (1953 as amended) in the Third Circuit Court, in and for Salt Lake County, State of Utah, the Honorable Maurice D. Jones, Judge, presiding.

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TEXT OF STATUTE

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,	:	
Plaintiff/Respondent,	:	
v.	:	
RICK MARKHAM,	:	Case No. 900040-CA
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JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 77-35-26(2)(a) (1953 as amended) and Utah Code Ann. § 78-2a-3(2)(c) (1953 as amended) whereby a criminal defendant in the Circuit Court may take an appeal from a judgment of conviction to the Utah Court of Appeals. Mr. Markham was convicted of a Class B misdemeanor at a bench trial before the Honorable Maurice D. Jones, Judge, Third Circuit Court, in and for Salt Lake County, State of Utah. Judge Jones rendered final judgment and conviction against Mr. Markham.

STATEMENT OF THE ISSUE

Did the trial judge err reversibly when he denied the defendant's motion for a directed verdict of acquittal on the grounds the State had failed to prove the corpus delecti of the crime charged?

STATEMENT OF THE CASE

Markham was charged by Information with Possession of Alcohol by a Minor, a Class B misdemeanor, in violation of Utah Code Ann. § 32A-12-13 (1953 as amended). He was found guilty of that charge at a bench trial before the Honorable Maurice D. Jones, Judge, presiding, on December 18, 1989. The State called one witness, University of Utah Police Officer Bradley Buckmiller, and then rested. At the conclusion of the State's case in chief, Markham moved for a directed verdict on the grounds the State had failed to prove a corpus delecti and had failed to prove the liquid allegedly possessed was alcohol.

After the trial judge denied the motion on both grounds, Markham called Bret Curry and testified himself. Markham waived the minimum time for sentencing after he was found guilty and Judge Jones sentenced him to serve five days jail suspended on payment of a \$55.00 fine and a \$100.00 recoupment fee to be paid within 30 days. On February 1, 1990, the trial judge stayed the sentence pending the outcome of this appeal.

STATEMENT OF THE FACTS

The State's sole witness was University of Utah Police Officer Brad Buckmiller. (Transcript (hereinafter cited as T.) 4 at 22-23). He testified that on October 27, 1989, just prior to

midnight, he was dispatched to a fraternity house at the University of Utah to help another officer clear out a party. (T. 6 at 17-25). There were between 80 and 100 people at the party and alcohol was being consumed. (T. 7 at 11, 20). The police attempted to stamp the hand of each guest who had identification to verify that he or she was 21 years or older so that they could regulate the use of alcohol. (T. 7 at 11-18). There were people in each room of the house consuming alcohol. (T. 8 at 1-3). As Buckmiller walked down the downstairs stairwell, he observed a man in a Tarzan costume with a Budwieser beer can and a small plastic bat in his right hand. (T. 8 at 12-24). Buckmiller thought the Tarzan clothed man walked to the shower area to avoid him. (T. 9 at 19-25). He identified the defendant as the man in the Tarzan costume. (T. 9 at 4-13). In a large shower area in the home, he saw the defendant set down a can of beer which fell over and ran into the drain. (T. 10 at 7-17). Buckmiller then picked up the can and claimed that it smelled of beer. (T. 12 at 1-6).

While Officer Kent cleared the other party goers out of the shower, Buckmiller questioned Markham regarding his age. (T. 13 at 1-6). Markham allegedly said he was 20 years old. (T. 13 at 23-25). He also supposedly admitted that he was born on December 18, 1968. (T. 14 at 1-5). After the State rested, Markham moved for a directed verdict on the grounds that the State had failed to prove the corpus delecti of the crime as to his age absent his

admissions and on the grounds that the State had failed to prove he was in possession of alcohol. (T. 20 at 1-9, 13-15). The Court denied both motions. (T. 20 at 10-16). The defendant then called Bret Curry as his first witness. (T. 20 at 24-25). Curry testified that there were 200 people at the Capa Sigma house around midnight on the night in question and that 80 to 100 people were drinking. (T. 23 at 5-9). He stated that he heard the defendant deny Buckmiller's accusations that the defendant had been holding a beer or consuming a beer. (T. 23 at 19-25; 24 at 1). Curry testified that the stairwell Buckmiller walked down was poorly lit and had dark wood paneling. (T. 24 at 5-7).

Rick Markham testified that he first saw Buckmiller in the shower area. (T. 27 at 17-20). He further denied that Buckmiller picked up any beer cans in the shower or that he had been drinking. (T. 28 at 24-25; 29 at 1-3).

SUMMARY OF THE ARGUMENT

Markham's motion for a directed verdict should have been granted because the State did not adduce evidence of the corpus delecti of the offense of Minor In Possession of Alcohol. Absent the defendant's admissions that he was 20 years old, the prosecution failed to produce independent evidence which sufficiently corroborated his age in satisfaction of either prong of the corpus delecti analysis. Thus, the conviction cannot be upheld.

ARGUMENT

**POINT I. THE STATE FAILED TO ESTABLISH THE CORPUS
DELECTI OF THE CRIME OF MINOR IN
POSSESSION OF ALCOHOL BY EVIDENCE
INDEPENDENT OF MARKHAM'S ALLEGED
ADMISSIONS.**

The general rule is that to prove guilt in a criminal case the prosecution must demonstrate that "(a) that the injury or harm specified in the crime occurred, (b) this injury or harm was caused by someones criminal activity, and (c) the defendant was the guilty party." State v. Knoefler, 563 P.2d 175, 176 (Utah 1977) (footnote 2). However, to make out a corpus delecti, the State is only required to present evidence that establishes parts (a) and (b) of the above. Utah employs this two-pronged analysis to determine whether a corpus has been proved. State v. Petree, 659 P.2d 443, 444 (Utah 1983). This means that to prove a corpus delecti the prosecution does not need show the defendant's connection to the crime merely that a crime occurred. Id. Similarly, the prosecution does not need to prove all of the elements of a crime to establish a corpus delecti. In State v. Cazier, 521 P.2d 554, 555 (Utah 1974), the Utah Supreme Court specifically rejected the defendant's contention that the corpus delecti of a crime includes the total proof of all of the elements necessary to find the defendant guilty of the crime charged.

Additionally, it should also be noted that the two prongs of the corpus delecti need not be shown beyond a reasonable doubt.

For example, in State v. Ferry, 275 P.2d 173 (Utah 1954), the Court held that the independent, corroborating evidence of the corpus delecti must be proved by clear and convincing evidence. Moreover, it is well established that the defendant's admissions or confession can not be considered in determining whether there is a sufficient quantum of evidence to make out a corpus delecti. The Utah Supreme Court reasoned in State v. Erwin, 120 P.2d 285, 297 (Utah 1941):

In order to support a conviction, the State must prove the corpus delecti; that is that a crime was committed without the aid of the admissions of the defendants themselves. But it does not mean that such defendant must be connected with the crime; nor does it mean that such proof must be sufficient to satisfy a reasonable mind beyond a reasonable doubt.

The corpus delecti cases in Utah are premised upon the rationale that although an admission may be admissible under an exception to the hearsay rule admissions should not be considered when weighing the evidence necessary to overcome a directed verdict because of the possibility of fabrication. State v. Ferry, at 174; State v. Jessup, 100 P.2d 969, 972 (Utah 1940). Despite the fact that the corpus delecti has been criticized as a technical legal rule, it is still employed in Utah on the rationale that "it is better that 10 men go free than that one innocent man be punished." State v. Weldon, 314 P.2d 353, 356 (Utah 1957).

To apply the corpus delecti doctrine to the case at bar, the text of the statute must be analyzed. The crime of Minor In

Possession of Alcohol is found in Utah Code Ann. § 32A-12-13 (1953 as amended) The pertinent statutory language reads:

(i)t is unlawful for any person under the age of 21 years to purchase, possess, or consume any alcoholic beverage or product, unless specifically authorized by this title." U.C.A. § 32A-12-13(1).

There is no evidence in the record that Markham purchased any alcoholic beverage, so we can disregard that language for the purposes of our analysis. For the verdict to stand in this case, the evidence independent of admissions must show (1) the injury specified in the crime occurred and (2) the injury was caused by someones criminal activity. The plain language of the statute tends to indicate that the injury sought to be prevented is that those of less experience in terms of years, not be able to obtain alcoholic beverages. To apply the corpus delecti analysis under prong one to Mr. Markham's case, we should excise his extra judicial admissions regarding his age. (T. 13 at 11, 23-25; 14 at 1-5). There is no evidence left to corroborate that he was a minor once these extra-judicial statements are removed. Let alone evidence that rises to the clear and convincing standard of proof required by Ferry. Buckmiller never testified that Markham appeared to be under age. Although he did state that the police were attempting to stamp the hand of each party goer that could verify that he or she had reached the age of majority, (T. 7 at 9-13), Buckmiller never related whether Markham's hands bore a stamp. In fact, Buckmiller's

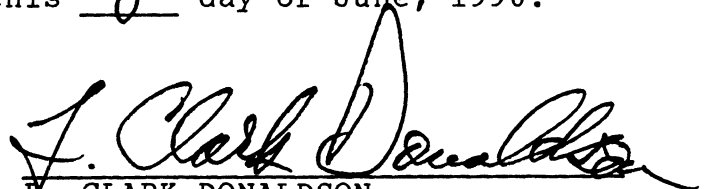
suspicion towards the defendant actually seemed to be based on his perception of furtive or nervous movement. (T. 9 at 19-25). In any event, the evidence absent admissions simply falls short of showing the first requirement of corpus delecti.

Even if this Court determines that proof of the accused minor status must be shown under prong two, the criminality prong, of the corpus delecti, the evidence simply does not overcome this hurdle. Consequently, the trial judge should have granted Markham's motion for a directed verdict on the grounds the corpus delecti of the crime was not proven. This error so undermines the likelihood of the guilty verdict that it constitutes reversible error. Cf. State v. Knight, 734 P.2d 913, 920 (Utah 1987)(prosecutions failure to provide information regarding key witness eroded confidence in fairness of verdict).

CONCLUSION


Markham respectfully requests that this Court reverse his conviction and remand his case for dismissal.

Respectfully submitted this 8 day of June, 1990.


D. CLARK DONALDSON
Attorney for Appellant

CERTIFICATE OF MAILING AND SERVICE

I, L. CLARK DONALDSON, certify that on June 8, 1990, I served a copy of the attached Brief of Appellant upon Virginia Christensen, the attorney for the respondent in this matter, by personally serving it upon her at the following address: South Valley County Attorney's Office, 2001 South State Street, Suite S3700, Salt Lake City, Utah 84190-1200.


L. CLARK DONALDSON
Attorney for Appellant

ADDENDUM A

Utah Code Ann. § 32A-12-13 (1953 as amended) provides:

(1) It is unlawful for any person under the age of 21 years to purchase, possess, or consume any alcoholic beverage or product, unless specifically authorized by this title.

(2) It is also unlawful for any person under the age of 21 years to misrepresent their age, or for any other person to misrepresent the age of a minor, for the purpose of purchasing or otherwise obtaining an alcoholic beverage or product for a minor.